

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEVEN HOTZE, M.D., WENDELL
CHAMPION, HON. STEVE TOTH, and
SHARON HEMPHILL;

Plaintiffs,

v.

CHRIS HOLLINS, in his official capacity as
Harris County Clerk;

Defendant.

Case No.: 4:20-CV-03709

THE LINCOLN PROJECT AMICUS BRIEF
IN SUPPORT OF DEFENDANT

The Lincoln Project respectfully submits this *amicus curiae* brief in opposition to Plaintiffs' requested relief and in support of the Defendant.

INTRODUCTION

The Lincoln Project is an organization composed of Republicans, former Republicans and conservatives dedicated to defeating candidates who have abandoned their constitutional oath, regardless of party. To achieve that purpose, The Lincoln Project has created a broad coalition of supporters and volunteers across the country. Many of its supporters live in Harris County, Texas. The Lincoln Project has put its organization to work contacting, surveying, communicating with and mobilizing voters. To those ends, The Lincoln Project has invested significant resources in the State of Texas and Harris County in particular. The relief sought by Plaintiffs threatens to undermine much of the work The Lincoln Project has engaged

in and disenfranchise voters supporting their mission within Harris County. While the Defendant represents a significantly different interest than The Lincoln Project, any relief granted against him would have a significant and irreparable impact on The Lincoln Project and its supporters in Harris County.

ARGUMENT

I. Background.

A. *The COVID-19 pandemic.*

The global COVID-19 pandemic affects every aspect of life. As of October 31st, more than 46,196,000 people have tested positive for COVID-19 worldwide, 9,130,482¹ in the United States and 932,261 in Texas.² The devastating illness has cost 18,465 Texans their lives.³ Harris County alone accounts for 161,613 cases and 2,809 deaths,⁴ greater numbers than 27 states. The public health crisis has been declared both a national emergency and a public health disaster by the State of Texas. The danger of serious illness and death is amplified for older individuals and becomes particularly worrisome for those over the age of 65. Spread most easily in enclosed areas with large crowds, the illness presents a particular threat to voters gathering at indoor polling locations.

¹ Johns Hopkins University of Medicine, *COVID-19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins*, <https://coronavirus.jhu.edu/map.html> last visited November 1, 2020.

² Johns Hopkins University of Medicine, *Coronavirus Resource Center*, <https://coronavirus.jhu.edu/region/us/texas> last visited November 1, 2020.

³ *Id.*

⁴ Johns Hopkins University of Medicine, *Coronavirus Resource Center*, <https://bao.arcgis.com/covid-19/jhu/county/48201.html> last visited November 1, 2020.

Due to these realities, many supporters of The Lincoln Project likely cast their ballots at drive-thru polling places. The relief sought by Plaintiffs would disenfranchise those voters by rejecting valid votes cast.

The Lincoln Project also believes that many remaining supporters will be burdened by the closure of drive-thru polling places on Election Day. For those residents of Harris County who have been unable to vote to date, the drive-thru polling places may represent the safest option for those concerned about their health. Changing the locations of established polling places a day before Election Day could chill these voters by both adding to the confusion of voting on Election Day and subjecting them to long, indoor lines that threaten their health.

B. Traditional Republican history of expanding voting rights and access to the ballot.

Beginning with the Republican Party's first president, and The Lincoln Project's namesake, the Republican Party historically fought to expand equal rights, including at the ballot box. In the aftermath of the Civil War, Republicans sponsored and passed three constitutional amendments during Reconstruction: the Thirteenth Amendment (prohibiting slavery), the Fourteenth Amendment (barring states from denying equal protection of the laws), and the Fifteenth Amendment (dictating that the right to vote could not be denied on the basis of race). A half century later, Republicans were critical to passing the Nineteenth Amendment (prohibiting disenfranchisement based on sex).

Of course, the rights guaranteed by those constitutional provisions still needed to be vindicated and Republicans traditionally stood at the vanguard. For example,

Republicans aided the effort of future U.S. Supreme Court Justice Thurgood Marshall when he challenged the Democratic Party’s “white primary” in Texas. Considered by Justice Marshall as the most important case he ever argued,⁵ *Smith v. Allwright*⁶ centered on the right of an African-American in Harris County to vote.

It is in that proud tradition that The Lincoln Project have engaged in their efforts to help register, educate, and inform Texans seeking to cast their ballots. It is in that tradition of expanding access to the ballot that The Lincoln Project files this *amicus curiae* brief in support in opposition to Plaintiffs’ requested relief.

C. The Lincoln Project.

Founded less a year ago, The Lincoln Project grew swiftly in prominence among conservatives as it harnessed the sentiments of Republicans and former Republicans disaffected by the current administration and Congressional enablers. Best known for producing powerful videos and commercials, The Lincoln Project has supplemented those efforts with a substantial field operation in targeted states, including Texas. Harris County has been a focal point for those efforts.

Founders of The Lincoln Project have run multiple Republican gubernatorial, senatorial, and presidential campaigns throughout their careers. Several have longstanding ties to Texas. For example, founder John Weaver is a native Texan, attended Texas A&M University and helped lead the campaigns of President George H.W. Bush, Senator John McCain and Governor John Kaisch. Weaver also worked

⁵ Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. Cin. L. Rev. 1345, 1356 n. 69 (2003) (citing Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 248 (2000)).

⁶ *Smith v. Allwright*, 321 U.S. 649 (1944).

for several Republican members of Congress from Texas and served as the executive director for the Republican Party of Texas. Similarly, Reed Galen is a graduate of the University of Texas and a political strategist who helped guide the campaigns of President George W. Bush, Senator John McCain and Governor Arnold Schwarzenegger. Other founders have had equally prestigious careers working as Republican operatives. That experience has made them experts in reviewing voting patterns, engagement models and turnout strategies.

The Lincoln Project has put that expertise to work in Harris County over the past several months. Field staff and organizers have developed leadership teams in Harris County working on various programs to register voters, educate them on the process of voting, and communicate with those who support their preferred candidates. As the *Dallas Morning News* reported, in recent weeks The Lincoln Project has bolstered its mobilization efforts in Hispanic communities, spent nearly a million dollars in Texas and committed another million-dollar investment into its efforts in the state.⁷ Throughout that process, The Lincoln Project has encouraged its supporters to cast ballots early through means that maximize their health safety. Those efforts have included directing supporters to cast early ballots at drive-thru polling places in Harris County.

⁷ Jeffers Jr., Gromer, *Lincoln Project plans Texas offensive against Republican Donald Trump, steps up Hispanic outreach*, Dallas Morning News (Oct. 6, 2020, 5:30 AM), <https://www.dallasnews.com/news/politics/2020/10/06/lincoln-project-plans-texas-offensive-against-republican-donald-trump-steps-up-hispanic-outreach/> last visited Oct. 6, 2020.

Through its leadership teams and field staff, The Lincoln Project has targeted voters it has identified as Republicans or former Republicans who support their preferred candidates. Because Texans must either vote in a party primary⁸ or take an oath of affiliation⁹ to join a political party, and because that affiliation automatically expires at the end of every calendar year,¹⁰ it requires both substantial skill and expertise to identify and target voters. However, given the background of its founders and an investment of resources in Harris County, The Lincoln Project has been able to make high quality estimates for its voter engagement programs. Those estimates in turn inform The Lincoln Project's belief that granting Plaintiffs' request for relief would disenfranchise a significant number of its supporters.

II. Effect of Plaintiffs' Request for Relief on Conservative Voters

Republican and former Republican voters tend to be older and more susceptible to the health risks associated with the COVID-19 pandemic. Consequently, they are also more likely to take advantage of safer voting options, such drive-thru polling places. Rejecting votes cast at drive-thru polling places would have a disproportionate negative impact on likely Republican voters.

The Lincoln Project voter analysis combined both past party affiliation (voting in any of the past three Republican primaries) and additional demographic data to determine that 169,511 likely Republican voters over the age of 65 live in Harris County.¹¹ While the raw numbers are smaller than the number of likely Democratic

⁸ Tex. Elec. Code Ann. § 162.003.

⁹ Tex. Elec. Code Ann. §§ 162.006 and 162.007.

¹⁰ Tex. Elec. Code Ann. § 162.010.

¹¹ See Appendix I.

voters in Harris County, the percentage of this subset among total likely Republican is greater. Likely Republican voters 65 or older account for 28.6% of all likely Republican voters in Harris County. A similar subset among Democrats equates to only 18.6% percent. Against this backdrop, The Lincoln Project expects that the percentage of Republican voters seeking safe voting methods, including drive-thru polling places, would constitute a significant number of total votes.

Currently, 1,417,568 voters have cast absentee or early ballots in Harris County. Of that number, the two oldest age brackets – and the most susceptible to severe health threat from the COVID-19 pandemic – constitute 27.60% (ages 50-64) and 23.27% (age 65+) of the total votes in Harris County. It should not come as a shock that these age brackets sought out safer alternatives than in-person Election Day voting.

The Lincoln Project's estimated subset of likely Republican voters within the total who have already cast ballots is 572,000, or 40.4% of the total number of ballots cast within Harris County to date. Extrapolating from that number, The Lincoln Project estimates that of the roughly 127,000 voters who cast ballots at drive-thru polling places, approximately 51,300 were likely Republicans ($127,000 \times 40.4\%$).

Should the Court grant the Plaintiffs' requested relief, that would mean rejecting the votes of at least 51,300 likely Republicans in Harris County. Such relief would effectively disenfranchise tens of thousands of likely Republican voters, including many supporters of The Lincoln Project, across the county.

III. The Southern District Should Defer to the Texas Supreme Court's Decision on this Matter of State Law.

The Plaintiffs have brought three similar claims before the Texas Supreme Court. On all three occasions, most recently on November 1, 2020, the Texas Supreme Court has rejected the Plaintiffs' requests for relief. Because the definition of polling place and the Defendant's ability to determine the locations of polling places within his jurisdiction both constitute matters of state law, this Court should defer to the state court's prior decisions. Such deference would be in line with the conservative legal ideology that The Lincoln Project promotes, allowing states to self-govern with minimal interference from the federal government, including the federal judiciary.

CONCLUSION

For the reasons argued above, The Lincoln Project respectfully urges this Court to deny the declaratory and injunctive relief prayed for by the Plaintiffs.

Dated: November 1, 2020

Respectfully submitted,

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¹² *Pro hac vice* motion pending.

Certificate of Service

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 1, 2020, and that all counsel of record were served by CM/ECF.

/s/ Jacob Monty

Appendix I

The Lincoln Project Voter Analysis - Harris County

Total Voters

- **Total Likely Republicans: 592,230**
- Total Likely Democrats: 1,120,077

65+ Voters

- **65+ - Likely Republican affiliated voters: 169,511**
 - 28.6% of Harris County Likely Republican affiliated voters are 65+
- **65+ - Likely Democrat affiliated voters: 207,895**
 - 18.6% of Harris County Likely Democrat affiliated voters are 65+

COVID-19

- Total COVID Cases in Harris County: **160,984 positive infection tests**
 - COVID Deaths in Harris County: 2,806 deaths

Early Voters (Absentee or In-Person) Cast to Date

Age Group	Total Votes	Percentage of Votes
18-29	215,271	15.19%
30-39	241,593	17.04%
40-49	239,506	16.90%
50-64	391,287	27.60%
65+	329,911	23.27
TOTAL	1,417,568	100.00%